

MINTZ LEVIN
COHN
FERRIS
GLOVSKY
AND
POPEO PC

Washington
Boston
New York
Reston

RECEIVED

SEP 13 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

701 Pennsylvania Avenue,
N.W.
Washington, D.C. 20004
202 434 7300
202 434 7400 fax
www.mintz.com

Chérie R. Kiser

Direct dial 202 434 7325
ckiser@mintz.com

September 13, 2000

EX PARTE FILING

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Implementation of the Local Competition Provisions of the
Telecommunications Act of 1996, CC Docket No. 96-98, Intercarrier
Compensation for ISP-bound Traffic, CC Docket No. 99-68**

Dear Ms. Salas:

On September 8, 2000, Lee Schroeder of Cablevision Lightpath, Inc. ("Lightpath"), and the undersigned met with Jordan Goldstein of the Common Carrier Bureau. The meeting concerned the New York Public Service Commission's ("NY PSC") treatment of intercarrier compensation. This issue has been raised both in Lightpath's comments and reply comments in the above-referenced proceeding. Lightpath also provided Mr. Goldstein with summary of the NY PSC's approach to intercarrier compensation for Internet service providers. A copy of this summary is attached.

Pursuant to sections 1.1206(b)(1) and (b)(2) of the Commission's rules, an original and one copy of this letter are being filed with the Office of the Secretary. Copies of the letter are also being served on the Commission personnel who participated in the meeting.

No. of Copies rec'd 01
List A B C D E

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

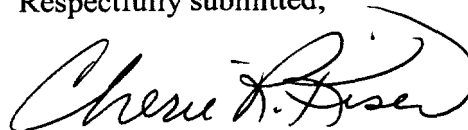
Magalie Roman Salas

September 13, 2000

Page 2

Any questions concerning this submission should be addressed to the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chérie R. Kiser". The signature is fluid and cursive, with a large loop at the end.

Chérie R. Kiser

cc: Lee Schroeder
Jordan Goldstein

D:\docs\178965.1(3%3901!.DOC)

Summary of the New York Public Service Commission's Approach to Inter-Carrier
Compensation for Calls to Internet Service Providers.^{1/}

In April, 1999 the New York Public Service Commission ("NYPSC") instituted a proceeding to re-examine reciprocal compensation -- particularly compensation for large-volume call termination to single customers, such as Internet service providers ("ISPs") and chatlines, that receive far more calls than they make (i.e., "convergent" traffic).^{2/} After exhaustive discovery, a thorough administrative hearing (including an opportunity for cross examination of witnesses and experts), and a full round of briefing, the NYPSC concluded that:

- ISP-bound traffic should be treated as local, finding that there was "no sound reason to treat ISP traffic differently from other convergent traffic;"^{3/}
- Convergent traffic can be terminated more efficiently and at lower costs than other traffic, and should therefore be compensated at a lower rate than non-convergent traffic;
- Carriers with a ratio of incoming to outgoing traffic greater than 3:1 for a three month period shall be presumed to carry a substantial amount of convergent traffic and should be compensated at the ILEC's end office rate for all traffic over the 3:1 ratio, unless a particular carrier can rebut this presumption. (Traffic below the 3:1 ratio continues to be compensated at Bell Atlantic's tandem rates in accordance with FCC rules);
- A carrier with a traffic imbalance greater than 3:1 can "rebut the presumption" by demonstrating that it is a full service, facilities-based carrier "investing in a network with tandem-like functionality, designed to both send and receive customer traffic."^{4/} A carrier that successfully rebuts the presumption is entitled to receive the tandem rate, or the existing contract rate,^{5/} for all traffic (including ISP-bound traffic) it terminates for another LEC.

The NYPSC's Order encourages true facilities-based competition by ensuring that full service, facilities-based carriers -- whose networks are designed to serve a wide range of

^{1/} See Proceeding to Reexamine Reciprocal Compensation, Case 99-C-0529, Opinion and Order Concerning Reciprocal Compensation, Opinion No. 99-10 (issued August 26, 1999).

^{2/} Id. at 1-2.

^{3/} Id. at 58.

^{4/} Id. at 57.

^{5/} The NYPSC made clear that its decision did not modify the terms of existing contracts, except to the extent those contracts explicitly incorporate the tariffed rates affected by the NYPSC's Order. Id. at 60. In addition, ISP

residential and business customers dispersed over a broad geographic area -- are adequately compensated for the traffic they terminate. At the same time, the Order ensures that those carriers with more limited networks designed to specialize in terminating predominantly one-way traffic to relatively few customers are not overcompensated for the traffic they terminate.

traffic is to be included in the reciprocal compensation provisions in existing interconnection agreements, unless an agreement explicitly excludes such traffic. Id. at 60-61.